

ESTTA Tracking number: **ESTTA683633**

Filing date: **07/14/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Datum Group LLC		
Entity	limited liability company	Citizenship	California
Address	P.O. Box 12980 Marina Del Rey, CA 90295 UNITED STATES		

Attorney information	Marlene J. Williams Nixon Peabody LLP P.O. Box 26769 San Francisco, CA 94126-6769 UNITED STATES sftrademarks@nixonpeabody.com, mwilliams@nixonpeabody.com, dlab- aria@nixonpeabody.com Phone:415-984-8200
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Registration Subject to Cancellation

Registration No	4490434	Registration date	03/04/2014
Registrant	Koenig, Thomas 43 Shoal Drive East Vallejo, CA 94591 UNITED STATES		

Goods/Services Subject to Cancellation

Class 018. First Use: 2010/05/03 First Use In Commerce: 2010/07/01
All goods and services in the class are cancelled, namely: Luggage; handbags; duffle bags; garment-bags; tote bags

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	2015-07-14 DATUM & DESIGN Petition for Cancellation 072657.pdf(7985 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/mjw/
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Name	Marlene J. Williams
Date	07/14/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Datum Group LLC
Petitioner,

vs.

Thomas Koenig,
Respondent.

Cancellation No.:
U.S. Reg. No.: 4,490,434
Mark: DATUM & Design

PETITION FOR CANCELLATION

Petitioner Datum Group LLC believes that it has been and will continue to be damaged by continued registration of the mark shown in U.S. Reg. No. 4,490,434 and hereby petitions for cancellation of the registration under Section 14 of the Lanham Act, 15 U.S.C. § 1064.

1. Petitioner Datum Group LLC (“Petitioner”) is a California limited liability company having with an address of P.O. Box 12980, Marina Del Rey, California 90295.
2. Petitioner is the owner of the following U.S. Trademark Applications (collectively “Petitioner’s Applications”):
 - a. Ser. No. 86/047497 for the mark DATUM in connection with “Athletic apparel, namely, shirts, footwear, hats and caps; Athletic shirts; Beanies; Caps; Footwear; Hats; Shirts; Socks; Sweaters; Tank tops” in Class 25, filed August 26, 2013;
 - b. Ser. No. 86/497795 for the mark DATUM LINE in connection with “Clothing, namely, tops, bottoms; Headwear; Footwear; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic shirts; Athletic tights; Beanies; Caps; Dresses; Hats; Headbands; Jackets; Jeans; Jerseys; Leggings; Pants; Scarves; Shirts; Shorts; Skirts; Socks; Suits; Sweat pants; Sweaters; Swimwear; Tank tops; Ties; Underwear; Vests; Wristbands; Overalls, Coveralls” in Class 25, filed January 7, 2015; and
 - c. Ser. No. 86/497494 for the mark DATUM IS THE STARTING LINE in connection with “Clothing, namely, tops, bottoms; Headwear; Footwear; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic shirts; Athletic tights; Beanies; Caps; Dresses; Hats; Headbands; Jackets; Jeans; Jerseys; Leggings; Pants; Scarves; Shirts;

Shorts; Skirts; Socks; Suits; Sweat pants; Sweaters; Swimwear; Tank tops; Ties; Underwear; Vests; Wristbands; Overalls, Coveralls” in Class 25, filed January 7, 2015.

3. Petitioner or its predecessor in interest has been using its DATUM mark in connection with “Athletic apparel, namely, shirts, footwear, hats and caps; Athletic shirts; Beanies; Caps; Footwear; Hats; Shirts; Socks; Sweaters; Tank tops” since at least January 28, 2014.

4. On information and belief, Respondent Thomas Koenig (“Respondent”) is a United States citizen having an address of 43 Shoal Drive East, Vallejo, California 94591.

5. Respondent is the owner of record of U.S. Reg. No. 4,490,434 for the mark DATUM & Design (the “Registration”) for “Luggage; handbags; duffle bags; garment bags; tote bags ” in Class 18 (“Respondent’s Goods”). The Registration was filed on January 26, 2013 based use under Section 1(a) of the Trademark Act and was registered on March 4, 2014.

6. Petitioner’s Applications have been refused registration on the grounds of likelihood of confusion with the Registration. Hence, Petitioner has been, and continues to be, damaged by the Registration.

7. On information and belief, Respondent is not currently using the DATUM & Design mark in connection with Respondent’s Goods in the U.S.

8. On information and belief, Respondent has ceased use in the U.S. of DATUM & Design without intention to resume use in connection with Respondent’s Goods, thereby abandoning the mark.

9. On information and belief, Respondent was not using DATUM & Design in connection with Respondent’s Goods in the U.S. as of the January 26, 2013 application filing date, and therefore inappropriately claimed use at the time of filing the application.

10. On information and belief, Respondent has never used the mark DATUM & Design mark in connection with some or all of Respondent’s goods in the U.S.

11. Respondent’s registration of DATUM & Design on the Principal Register harms Petitioner.

PETITIONER THEREFORE requests that the Board order partial cancellation of U.S. Reg. No. 4,490,434 in its entirety, in the alternative, with respect to all goods in Class for which the mark has not been used or has been abandoned.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 50-2372.

Respectfully submitted,

By /MJW/

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Counsel for Petitioner Datum Group LLC

Dated: July 14, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **PETITION FOR CANCELLATION** was served on Registrant at his address of record as listed in the of the U.S. Patent and Trademark Office record of the Registration on this 14th day of July, 2015, by sending same, via first class mail, postage prepaid, to:

Koenig, Thomas
43 Shoal Drive East
Vallejo, California 94591

/DL/
Dennis Labaria